



# **CITIZENSHIP AND IMMIGRATION LAW IN COMPARATIVE PERSPECTIVE**

**Professor Ayelet Shachar**

**Spring 2009**

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## CITIZENSHIP AND IMMIGRATION LAW IN COMPARATIVE PERSPECTIVE

Law 262H1S; SUYRP Course; Spring 2009

**PROFESSOR AYELET SHACHAR**

Class Meeting Time: Thursday 2:10-4:00

Office Hours (FL 408): Wednesday 1:30-2:30 or by appointment

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Citizenship and immigration have become a hot-button political issue in recent years in Canada, as well as in many other destination countries. Debates range from admission questions – who should be allowed to enter, according to what criteria, and for how long – to queries about the civil rights of migrants, cultural diversity, and the level of integration that can legitimately be expected from newcomers once they have settled in the country. Another emerging topic is the growing impact of economic remittances, transnational investments, and political contributions by dual citizens in both sending and receiving countries. This course will explore these new developments, placing them in the broader context of Canadian immigration law, history, and policy. We will also refer to comparative evidence from the United States, Australia, France, Germany, Ireland, the United Kingdom, and Singapore, as well as examine the changing conceptions of membership in leading emigrant-sending countries, including Mexico, India, and China. With this global perspective in mind, we will chart the new terrain for Canadian citizenship and immigration law for the twenty-first century.

### EVALUATION

- Class participation (15%): Class meetings will be organized around a discussion of each week's readings. Class participation includes attendance, substantive participation in weekly discussions, and one in-class presentation of a comment paper (see below).
- Five-page comment paper (15%): The comment paper will be a critical assessment of one or more of the sources on the reading list. Comment papers are due at 4 p.m. on the day before the class readings are scheduled to be discussed. Please e-mail the comment paper to [ayelet.shachar@utoronto.ca](mailto:ayelet.shachar@utoronto.ca). Each student is expected to use the five-page comment paper to illuminate an important question in the reading or to develop their own coherent argument based on the readings. The submission of the comment paper will be accompanied by a short

in-class presentation of the paper. Students must sign up for the oral presentation of one of their comment papers ahead of time, during the third meeting of the seminar.

- Final (approx. 20 to 25 pages) research paper (70%): The final paper's topic must be pre-approved by the instructor. A one-page outline of your paper and a preliminary bibliography must be turned by 2:00 p.m., Thursday, February 26, 2009. The final paper is due by 12 noon on the last day of the reading period, April 30, 2009 (Records Office).

## READING MATERIALS

- The reading materials will draw upon Canadian and comparative jurisprudence and legislation governing citizenship and immigration law, as well as contemporary political theory and social science literature. The reading material is assembled in a course packet, *Citizenship and Immigration Law in Comparative Perspective*, edited by Professor Shachar (Faculty of Law, University of Toronto, 2009). The course packet is available for purchase at the bookstore in the basement of the Law School. Additional copies will be placed on short-term reserve at the Bora Laskin Law Library.

## I. FOUNDATIONS

### *Class 1: Introduction; The Classic Model of Sovereignty and the Challenges of Migration*

"Citizenship," in *Immigration and Citizenship: Process and Policy*, ed. Thomas Alexander Aleinikoff et al. (5<sup>th</sup> ed., West, 2003), p. 1

"Sovereignty," in *Immigration and Refugee Law: Cases, Materials, and Commentary*, ed. Emily Carasco et al. (Edmond Montgomery, 2007), p. 42

"Migration at a Glance," in *Report of the Global Commission on International Migration* (GCIM, 2005); available at [www.gcim.org/en/finalreport](http://www.gcim.org/en/finalreport)

### *Class 2: Social Closure Versus Open Borders?*

Rogers Brubaker, "Citizenship as Social Closure," in *Citizenship and Nationhood in France and Germany* (Harvard University Press, 1992), pp. 21-34

Saskia Sassen, *Losing Control? Sovereignty in an Age of Globalization* (Columbia University Press, 1996), pp. 1-6; 59-75

Bruce Ackerman, *Social Justice in the Liberal State* (Yale University Press, 1980), pp. 93-95

Gary S. Becker, "An Open Door for Immigrants—The Auction" *Wall Street Journal*, October 14, 1992

"Diversity Immigration in the United States" in *Immigration and Citizenship*, pp. 282-284

### *Class 3: The Shifting Border of Immigration Regulation*

Ayelet Shachar, "The Shifting Border of Immigration Regulation," 3 <i>Stanford Journal of Civil Rights and Civil Liberties</i> (2007), pp. 165-193	1
Jonathan Marino, <i>Daily Briefing: Head of Visitor Tracking Program wants Global ID System</i> , April 25, 2006, available at <a href="http://www.govexec.com">www.govexec.com</a>	31
The White House, "Fact Sheet: Fair and Secure Immigration Reform," January 7, 2004	33
Alexandra Dobrowolsky, "(In)Security and Citizenship: Security, Im/migration and Shrinking Citizenship Regimes," 8 <i>Theoretical Inquiries in Law</i> (2007), 629-661	35
Valsamis Mitsilegas, "Border Security in the European Union: Towards Centralized Controls and Maximum Surveillance," in <i>Whose Freedom, Security, and Justice? EU Immigration and Asylum Law and Policy</i> , ed. Anneliese Baldaccini et. al. (Hart, 2007), pp. 359-394	52

## **II. WHO BELONGS? CITIZENSHIP AND IMMIGRATION LAW IN A NUTSHELL**

### *Class 4: Who "Naturally" Belongs to the Political Community – and on What Basis?*

Government of Canada, <i>Canadian Citizenship Act and Current Issues</i> , BP-445E, August 1998	72
Amendment to Citizenship Act (Adoption)	79
Fourteenth Amendment, U.S. Constitution	81
Rogers Brubaker, "Citizenship as Social Closure," in <i>Citizenship and Nationhood in France and Germany</i> (Harvard University Press, 1992), pp. 21-34	84
<i>Romans v. Canada</i> , Communication No. 1040/2001, CCPR/C/81/D/1040/2001 (2004)	98
<i>Re Ortiz-Martinez</i> , Board of Immigration Appeals, File No. A-27-645-795, May 25, 2007	105
Ayelet Shachar, "Children of A Lesser State: Sustaining Global Inequality through Citizenship Laws," in <i>NOMOS: Child, Family, and State</i> , ed. Stephen Macedo and Iris Marrión Young (NYU Press, 2003), pp. 354-397	110
Twenty-Seventh Amendment of the Constitution Act 2004 [Ireland]	137



## ***Class 5: Family-Sponsored Immigration Categories – Who is Family?***

- “Family Class - Canada” in Emily Caraso et. al., *Immigration and Refugee Law: Cases, Materials, and Commentary* (Emond Montgomery, 2007), pp. 369-380 144
- Richard Fausset, “Binational Gay Couples in Immigration Bind” *Los Angeles Times*, July 10, 2006 151
- National Coalition for Gay and Lesbian Equality v. Minister of Home Affairs*, C.C.T. 10/99 [South Africa] 155

## ***Class 6: Employment-Based Immigration: Point System for the Highly Skilled***

- Ayelet Shachar, “The Race for Talent: Highly Skilled Migrants and Competitive Immigration Regimes” 81 *NYU Law Review* 148 (2006) 158
- Yudhijit Bhattacharjee, “US Immigration: Groups Urge Easing of Restrictions on Visa Policies Affecting Scientists,” 304 *Science* 943 (2004) 188
- Muni v. INS*, 891 F.Supp. 440 (1995) 189
- “Point System for the U.S.?” in Demetrios G. Papademetriou and Stephen Yale-Loehr, *Balancing Interests: Rethinking U.S. Selection of Skilled Immigrants* (Carnegie Endowment, 1996) 196
- Brenda S. A. Yeoh, “Bifurcated Labor: The Unequal Incorporation of Transmigrants in Singapore” 97 *Tijdschrift voor Economische en Sociale Geografie* (2006), 26-37 199

## ***Class 7: Temporary Admission Categories and Undocumented Migrants***

- Citizenship and Immigration Canada, *News Release: Government of Canada Admits Highest Numbers of Newcomers in Canada’s History*, March 14, 2008 211
- Nicholas Keung, “Advocates, Unions Fighting for Migrant Labourers’ Rights: Unite to Prevent Exploitation, Improve Conditions for Canada’s Rising Number of Temporary Workers,” *The Toronto Star*, August 27, 2008 213
- Martin Ruhs, “The Potential of Temporary Migration Programmes in Future International Migration Policy: in *Global Commission on International Migration* (GCIM, 2005) 216
- Dilip Ratha, “Leveraging Remittances for Development,” *Migration Policy Institute*, June 2007 245

Steve Bills, "RBC Offering Immigrants Phone-Bank Translating," <i>The American Banker</i> , August 26, 2008	260
Michael Walzer, <i>Spheres of Justice: A Defense of Pluralism and Equality</i> (Basic Books, 1983), pp. 52-61	262
"My Life as an Illegal," <i>Texas Monthly</i> , July 2006	270
<b><i>Class 8: Asylum Seekers &amp; Movie Screening "Well-Founded Fear"</i></b>	
UNHRC, "Safeguarding Asylum," in <i>The State of the World's Refugees 2006: Human Displacement in the New Millennium</i> (Oxford University Press, 2006) pp. 31-61	276
Deborah E. Anker, "Refugee Law, Gender, and the Human Rights Paradigm," 15 <i>Harvard Human Rights Journal</i> (2002), pp. 133-154	311
Professor Shachar will offer introductory comments before the movie, which will be shown during our regular meeting time (FL Dining Room)	
<b>III. THE NEW FRONTIERS OF CITIZENSHIP AND IMMIGRATION</b>	
<b><i>Class 9: Multicultural Citizenship; Competing Models; Islam in the West</i></b>	
"France/Secularism," Statement of President Jacques Chirac, France, January 28, 2004.	322
Ayelet Shachar, "Religion, State, and the Problem of Gender: New Modes of Citizenship and Governance in Diverse Societies," 50 <i>McGill Law Journal</i> (2005), pp. 78-85.	323
Bruce Crumley, "Too Muslim To Be French?" <i>Time</i> , July 12, 2008	335
Graeme Hamilton, "Quebec Demands Immigrants Sign-Off on 'Shared Values'," <i>National Post</i> , October 29, 2008	337
The Canadian Society of Muslims News Bulletin, <i>Darul-Qada: Beginnings of Muslim Civil Justice System in Canada</i> (2003).	340
Arbitration Act, 1991, S.O. 1991, ch. 17, ss. 6, 17-20	343
Canadian Council of Muslim Women, <i>Position Statement on the Proposed Implementation of Section of Muslim Law [Sharia] in Canada</i> (2004).	346
Ministry of the Attorney General, <i>Background: The Family Statute Law Amendment Act</i> (2005)	353
Family Arbitration, Ontario Regulation 134/07 (2007)	355

### ***Class 10: Dual Nationality: Membership Beyond the Territory***

- Don J. DeVoretz Yuen Pau Woo, "Dual Citizenship and Canada's New Diaspora" (2006) available at [www.asiapacific.ca/analysis/pubs/pdfs/oped/dualcitizenship\\_oped2006.pdf](http://www.asiapacific.ca/analysis/pubs/pdfs/oped/dualcitizenship_oped2006.pdf) 359
- Sam Dillon, "Mexico Woos U.S. Mexicans, Proposing Dual Nationality," *New York Times*, December 10, 1995, A16 361
- Claudio Lopez-Guerra, "Should Expatriates Vote?" 13 *Journal of Political Philosophy* 216 (2005) 363
- Kim Barry, "Home and Away: The Construction of Citizenship in an Emigration Context," 81 *NYU Law Review* (2006), pp. 11-59 382
- Italy's "Overseas Constituency," Provisions Governing the Right to Vote of Italian Citizens Abroad, Law No. 459, Dec. 27, 2001, Gazz. Uff. No. 4, Jan. 5, 2002 [Italy] 431

### ***Class 11: Regional or Multilevel Citizenship: Where Europe and North America Diverge?***

- Article 17, "Citizenship of the Union," Consolidated Version of the Treaty on European Union, *Official Journal of the European Communities*, C 325/1, 2002 433
- Peter Andreas, "A Tale of Two Borders: The U.S.-Canada and U.S.-Mexico Lines after 9-11," in *The Rebordering of North America*, ed. Peter Andreas and Thomas J. Biersteker (Routledge, 2003), pp. 1-16; 19-23 436
- Government of Canada, "About the Security and Prosperity Partnership of North America," available at <http://www.spp-psp.gc.ca/overview/about-en.aspx> 460
- Elsbeth Guild, "Citizenship Without a Constitution, Borders Without a State: EU Free Movement of Persons," in *Whose Freedom, Security and Justice?* pp. 25-55 463

### ***Class 12: The Future of Citizenship in a Globalizing World***

- Alison Brysk and Gershon Shafir, "Globalizing Citizenship?" in *People Out of Place: Globalization, Human Rights, and the Citizenship Gap* (Routledge, 2004), pp. 209-215 480
- Ayelet Shachar, *The Birthright Lottery: Citizenship and Global Inequality* (Harvard University Press, 2009)



## I. FOUNDATIONS

### *Class 3: The Shifting Border of Immigration Regulation*

- Ayelet Shachar, "The Shifting Border of Immigration Regulation," 3 *Stanford Journal of Civil Rights and Civil Liberties* (2007), pp. 165-193 1
- Jonathan Marino, *Daily Briefing: Head of Visitor Tracking Program wants Global ID System*, April 25, 2006, available at [www.govexec.com](http://www.govexec.com) 31
- The White House, "Fact Sheet: Fair and Secure Immigration Reform," January 7, 2004 33
- Alexandra Dobrowolsky, "(In)Security and Citizenship: Security, Im/migration and Shrinking Citizenship Regimes," 8 *Theoretical Inquiries in Law* (2007), 629-661 35
- Valsamis Mitsilegas, "Border Security in the European Union: Towards Centralized Controls and Maximum Surveillance," in *Whose Freedom, Security, and Justice? EU Immigration and Asylum Law and Policy*, ed. Anneliese Baldaccini et. al. (Hart, 2007), pp. 359-394 52

